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38-CV-2019-900152.00
CIRCUIT COURT OF
HOUSTON COUNTY, ALABAMA
CARLA H. WOODALL, CLERK

**IN THE CIRCUIT COURT OF
HOUSTON COUNTY, ALABAMA**

CARLOS HINOJOSA FABIAN,

Plaintiff,

vs.

Case No. CV 2019-_____

CITY OF DOTHAN, A Municipal Corporation; **TOM DAVIS**, Officially and Individually, and X, Y and Z, being those Agents Employees, and/or Servants of the City of Dothan Whose Names Otherwise are Unknown to Plaintiff at this time, Officially and Individually, who will be added by Amendment when ascertained, who unlawfully seized and hold Plaintiff's property.

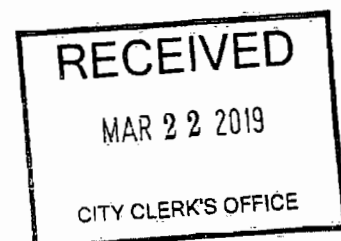
Defendants.

**COMPLAINT FOR DECLARATORY JUDGMENT
AND DEMAND FOR RELEASE AND RETURN OF SEIZED PROPERTY**

COMES NOW Plaintiff Carlos Hinojosa Fabian, by and through his attorney, and moves the Court for declaratory and injunctive relief and an order releasing and returning to him certain personal property belonging to him unlawfully seized by officers with the City of Dothan police department and being held by the City of Dothan, to-wit: one 2013 Peterbilt 386 truck, VIN 1XPHDP9X9DD190295 and one 2004 token trailer, VIN 1UYVS25344U094835, showing the following:

Jurisdictional Allegations

1. The City of Dothan is a Municipal Corporation created by the Alabama Legislature.
2. Tom Davis is an adult citizen of Houston County and an officer with the City of Dothan Police Department.



3. Defendants X, Y and Z are agents and/or servants of the City of Dothan whose names are otherwise unknown, officially and individually, who will be added by amendment when ascertained who wrongfully seized and hold Plaintiff's property.

4. All events occurred in Houston County, Alabama.

Factual Allegations

5. On or about February 8, 2019, the Dothan Police Department executed a search warrant on the 2013 Peterbilt 386 truck at 5622 U.S. Highway 231, Dothan, Alabama.

6. As a result of the search, officers of the Dothan Police Department seized the aforementioned 2013 Peterbilt 386 truck, VIN 1XPHDP9X9DD190295 and the 2004 token trailer, VIN 1UYVS25344U094835, the property of Plaintiff/Claimant Carlos Hinojosa Fabian.

7. Plaintiff was not present at the time of the search and has not been charged with any crime.

8. Plaintiff has not engaged in any conduct which would invoke the jurisdiction of the State of Alabama or its agents to continue to detain the Plaintiff's property, and continued detention of it is an unlawful conversion and interference with Plaintiff's right of dominion over and use of his property.

9. Defendants' continued detention of Plaintiff's property deprives him of his property without due process of law in violation of the Fourteenth Amendment of the United States Constitution and Article I, Section VI of the Alabama Constitution.

10. Although Plaintiff has attempted to retrieve his property, it remains in the custody of Defendants and, therefore, Defendants continue to interfere with and prevent Plaintiff's right of dominion over and use of it, thereby depriving him of his property without due process of law in violation of the Fourteenth Amendment of the United States Constitution and Article I, Section

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VI of the Alabama Constitution.

10. Plaintiff has not violated the provisions of *Ala. Code* § 20-2-93 (1975), as amended, nor can Defendants make a probable cause/ prima facie showing that he has, which it must do before instituting forfeiture proceedings.

11. Defendants had no probable cause to seize Plaintiff's property and cannot connect it with any controlled substance violation which would justify the seizure.

WHEREFORE, Plaintiff prays for the following relief:

- A. Declaration that the conduct of the Defendants violated the rights of the Plaintiff under the appropriate constitutional amendments.
- B. A judgment declaring that Defendants wrongfully seized Plaintiff's property.
- C. A judgment declaring that Defendants have wrongfully refused to return Plaintiff's property.
- D. An injunction prohibiting Defendants from continuing to withhold Plaintiff's property.
- E. An injunction ordering Defendants to immediately return Plaintiff's property.
- F. Costs of this proceeding.
- G. Such other legal and equitable relief as this Court deems just and proper.

Motley, Motley & Yarbrough, LLC

s/ Derek E. Yarbrough
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